

REMARKS

Claims 1 through 3, 5 through 16, and 18 through 21 are currently pending in the application.

This amendment is in response to the Office Action of June 23, 2004.

35 U.S.C. § 101 Double Patenting Rejection

Claims 1 through 3, 5 through 16, and 18 through 21 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1 through 21 of prior U.S. Patent 6,599,666 (hereinafter referred to as the '666 patent). Applicant respectfully traverses this rejection, as hereinafter set forth.

Applicant asserts that t reliable test for statutory double patenting under 35 U.S.C. § 101 is whether a claim in this application can be literally infringed without literally infringing a corresponding claim in the '452 application. Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then statutory double patenting under 35 U.S.C. § 101 does not exist. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Applicant asserts that no statutory double patenting under 35 U.S.C. § 101 exists between the embodiments of the presently claimed inventions of presently amended independent claims 1 and 12 of the present application and the embodiments of the claimed inventions in corresponding independent claims 1 and 12 of the '666 patent. For instance, the embodiment of the claimed invention of presently amended independent claim 1 of the present application sets forth elements of the claimed invention calling for “forming a first layer of attenuating material over a portion of the substrate”, “forming a second layer of attenuating material over a portion of the first layer of attenuating material”, and “forming an opaque layer over a portion of the second layer of attenuating material” whereas the invention set forth in corresponding claim 1 of the '666 patent does not. Similarly, the embodiment of the claimed invention of presently amended independent claim 12 of the present application sets forth elements of the claimed invention calling for “forming a plurality of isolated completely transmissive regions and a plurality of other regions on the substrate”, “forming a plurality of slightly attenuated regions, each of the

plurality of slightly attenuated regions being formed at an edge defining one of the plurality of isolated completely transmissive regions on the substrate”, and “forming a plurality of completely transmissive regions on the substrate” whereas the invention set forth in corresponding claim 1 of the '666 patent does not.

Accordingly, Applicant asserts that no statutory double patenting under 35 U.S.C. § 101 exists between the embodiments of the inventions set forth in presently amended independent claims 1 and 12 of the present application and the embodiments of the inventions set forth in corresponding independent claims 1 and 12 of the '666 patent. Therefore, presently amended independent claims 1 and 12 and dependent claims 2, 3, 5 through 11, 13 through 16, and 18 through 21 therefrom are allowable.

Applicant requests the allowance of claims 1 through 3, 5 through 16, and 18 through 21 and the case passed for issue.

Respectfully submitted,



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